

EXHIBIT 4

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Before Commissioners:

In the Matter of the Consideration of the Reform of Intrastate Interexchange Telecommunications Market Structure and Regulations in Alaska

ORDER NO. 6

BY THE COMMISSION:

Background

R-98-1(6) - (11/20/00)
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1 GCI Communication Corp. (GCI) is the only entity unconditionally
2 supporting the repeal of 3 AAC 52.355.¹ Alascom, Inc. d/b/a AT&T Alascom (AT&T
3 Alascom) recommends lifting 3 AAC 52.355 simultaneously with sharing of carrier of
4 last resort (COLR) responsibilities, implementing a Bush interexchange carrier high-
5 cost subsidy, and other policy changes. Others commenting on this matter either
6 strongly support preserving 3 AAC 52.355 or argue that the restriction should not be
7 lifted until certain conditions have been met (e.g., adequate wholesale rates are in
8 place, and a successor policy in place).

9 Those favoring repeal of 3 AAC 52.355 support their position with both
10 policy and legal arguments. The primary legal argument on this point is that
11 3 AAC 52.355 is not competitively neutral and violates the Communications Act of
12 1934, as amended by the Telecommunications Act of 1996 (the Act),
13 47 USC § 253(a). That section states:

14 IN GENERAL. -- No State or local statute or regulation, or
15 other State or local legal requirement, may prohibit or have the
16 effect of prohibiting the ability of any entity to provide any interstate
or intrastate telecommunications service.

17 Docket R-97-1 was opened to address the above legal question. At Public Meetings
18 held in 1997, the Alaska Public Utilities Commission (APUC),² concluded that
19 47 USC § 253(b) permits the policy of 3 AAC 52.355, if it is in the public interest.

20 Section 253(b) states:

21 STATE REGULATORY AUTHORITY. --- Nothing in this
22 section shall affect the ability of a State to impose, on a
competitively neutral basis and consistent with section 254 of this
title, requirements necessary to preserve and advance universal

23 ¹ Rather than repealing 3 AAC 52.355, GCI would replace it with affirmation that
24 construction is authorized in all areas of the state and prohibited in none.

25 ² The Alaska Public Utilities Commission is the predecessor agency to the
26 Regulatory Commission of Alaska.

1 service, protect the public safety and welfare, ensure the continued
2 quality of telecommunications services, and safeguard the rights of
consumers.

3 Through Docket R-97-1, the APUC also concluded it would maintain 3 AAC 52.355
4 pending further investigation of the public interest issue.

5 We investigated whether it was in the public interest to preserve
6 3 AAC 52.355. The main policy reasons cited for repeal of 3 AAC 52.355 are that
7 repeal would allow facilities competition in rural areas, leading to improved service and
8 rates, better options for consumers, and improved infrastructure. The record in Docket
9 U-95-38 shows that for whatever reason, AT&T Alascom became active in replacing
10 its aging earth stations about the same time GCI filed to construct duplicate earth
11 stations in rural Alaska.³ The Commission Staff (Staff) documented that AT&T
12 Alascom upgraded its satellite facilities to DAMA in almost all of the rural locations
13 served by the GCI Demonstration Project.

14 In areas where GCI has constructed duplicate earth stations, evidence
15 suggests that consumers have benefited by lower retail rates and better quality
16 service.⁴ It is also argued that the threat of facilities competition will lead AT&T
17 Alascom to maintain lower wholesale rates as high rates will lead a competitor to build,
18 instead of buy from AT&T Alascom. Allowing facilities competition may also provide
19 resellers more options when purchasing services.

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21 ³In Docket U-95-38 we waived 3 AAC 52.355 allowing GCI to conduct a
22 Demonstration Project by building demand assigned multiple access (DAMA) earth
stations in 50 rural locations.

23 ⁴See Docket U-95-38 Staff Report of September 8, 1998. Service
24 improvements were mainly associated with better data rates and system quality
25 associated with provision of newly installed DAMA earth stations compared to then
aging incumbent earth stations. Since the time of the report, AT&T Alascom has
26 upgraded its facilities in most of the GCI DAMA locations.

1 Those seeking to retain 3 AAC 52.355 argue that the rural Alaska market
2 is too thin to support multiple earth stations. Some claim that GCI's demonstration
3 project was unprofitable. AT&T Alascom, while supporting repeal of 3 AAC 52.355,
4 agreed that it may not always make economic sense to have two sets of facilities in
5 every location. AT&T Alascom contended that GCI focused its rural demonstration
6 project on 56 of the most attractive Bush locations with the highest revenues and that
7 there are over one hundred and fifty small, unprofitable rural locations, where GCI
8 does not serve and probably never will.⁵ Similarly, the Rural Carriers Group (RCG)⁶
9 contended that most rural communities in the State would never see competitive
10 facilities-based carriers.⁷ RCG stated that competition would likely be in the form of
11 pure resellers or small enterprises owning a few switches and no transport facilities.
12 We note that if it is true that further duplicate facilities construction is unlikely in rural
13 Alaska, then it may make little difference in the market whether the we lift
14 3 AAC 52.355 or not.

15 Others argue that lifting the restriction will lead GCI or other carriers to
16 install uneconomical duplicate facilities in rural Alaska, creating undesirable
17 consequences, including increased costs, decreased revenues for the carrier of last
18 resort, increased demand on the state's universal service fund, and ultimately
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21 ⁵ See Reply Comments of AT&T Alascom at 3.

22 ⁶ The RCG is a group of interexchange carriers, all of which are affiliated with
23 local exchange carriers. The RCG is made up of ASTAC Long Distance, Inc., AP&T
24 Long Distance, Inc., King Salmon Communications, Inc., MTA Long Distance, Inc.,
25 OTZ Telecommunications, Inc. d/b/a OTZ Long Distance, and TelAlaska Long
26 Distance, Inc. In its reply comments, the RCG was joined by Ketchikan Public Utilities.

⁷ See R-98-1, March 15, 2000, Hearing Transcript (Transcript) at p. 20.

1 increased rates to the public.⁸ Unicom, Inc. (Unicom) asserted that AT&T Alascom lost
2 about 28 percent of its subscribed customer base and significant revenues at GCI
3 demonstration sites, and that both GCI and AT&T Alascom have recently asked for
4 subsidies to support Bush interexchange services. Unicom recommended that Staff
5 analyze the financial impact of duplicate facilities, with the public given an opportunity
6 to respond to Staff's report. Unicom also argued that conditions had not changed
7 sufficiently to warrant lifting the restrictions under 3 AAC 52.355, and that in any event,
8 it is better to achieve competitive neutrality consistent with Section 253 of the Act by
9 allowing joint ownership of single earth stations rather than duplication of earth
10 stations.

11 There are also assertions that facilities competition will either not
12 enhance service quality or will lead to a fragmented, lesser quality network because
13 GCI and AT&T Alascom's networks are not interoperable. For example, if a GCI rural
14 customer seeks to call a location where there is only an AT&T Alascom earth station
15 facility, the call must be completed using two satellite hops, decreasing signal quality
16 and increasing transmission delay. Two hops are needed because the GCI and AT&T
17 Alascom networks use different satellites and are based on different technology,
18 making them incompatible.

19 We note however, that even if GCI were not in the market, customers
20 would continue to experience double hops until AT&T Alascom had sufficiently
21 upgraded its facilities statewide to allow single hops between locations. To the extent
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23 ⁸ AT&T Alascom asserted the requirement for retail rate averaging protects
24 customers from rate increases resulting from uneconomic duplication of facilities. We
25 note however that there is no requirement that retail private line services be averaged
26 statewide and existing regulations provide AT&T Alascom the opportunity to increase
its rates given adequate demonstration of increased costs and our approval.

1 that facilities competition has spurred rural investment by the incumbent, then lifting
2 the facilities restriction may actually improve the likelihood that equipment statewide
3 will be upgraded to eliminate double hops. Last, we believe that the interoperability
4 problem is more related to the issue of whether we should split carrier of last resort
5 responsibilities, rather than the issue of repealing the facilities restriction.

6 Several of the IXC resellers, Unicom, and to some extent, the Alaska
7 Telephone Association (ATA), have also stated that it would be competitively unfair to
8 resellers to lift the facilities restriction when resellers are uncertain of market rules and
9 just, reasonable, and unbundled wholesale rates are not in place. Unicom stated that
10 if the restriction was lifted a company like GCI would have an advantage in the market
11 since it could upgrade its existing systems and begin delivery of service before
12 competitors could have access to unbundled rates and suitable wholesale services.
13 Some commentators state that resellers would be at a disadvantage when considering
14 whether to risk building or to continue buying service if reasonable wholesale rates
15 were not in place. Unicom contends that duplicate facilities will cause costs of
16 wholesale to skyrocket and will force competitors to pay for excess, duplicative
17 capacity. Furthermore, it is argued that allowing GCI the benefit of lifting
18 3 AAC 52.355 before having appropriate carrier of last resort (COLR) rules in place
19 would provide GCI with undue advantage.

20 Staff reported that the GCI DAMA project might be losing as much as
21 \$4.8 million per year.⁹ Staff qualified that while the project may be losing money, the
22 DAMA project might still be a better economic choice from GCI's perspective than to
23 purchase services from its competitors. Staff also argued that if GCI were to expand
24 its DAMA project to all areas where Alascom currently has satellite facilities, the

25 ⁹ See the R-98-1, Phase I Staff Report filed August 4, 2000.
26

1 project would likely become less profitable. Staff estimated that investment to serve
2 the remaining locations could be as high as \$44.7 million. Staff stated that while GCI
3 would appear to have the debt coverage to construct earth stations in these additional
4 locations, if it so desired, such investment might significantly impact GCI's unexpended
5 credit reserves. We conclude that it is unclear whether GCI, or any carrier, has a
6 strong economic incentive to invest \$44.7 million to reach what may be fewer than
7 13,000 rural access lines.

8 The record also contains information concerning the effects on AT&T
9 Alascom caused by facilities competition by GCI. AT&T Alascom asserted that its
10 market share, as measured in originating access minutes statewide, was reduced from
11 about 73 percent in 1995 to about 50 percent in 1999. Consistent with the minutes
12 data, between 1996 and 1999, AT&T Alascom reported that total company Long
13 Distance Message revenues dropped significantly from about \$138 million in 1996, to
14 \$117 million in 1998, and to \$99.8 million in 1999. AT&T Alascom also asserted that it
15 is losing money serving rural Alaska and the Commission should create an
16 approximate \$7.3 million intrastate interexchange carrier subsidy. We will address the
17 issue of interexchange subsidy in a later Order.

18 In its August 4, 2000, report the Staff argued that the intrastate
19 long-distance data provided by AT&T Alascom was limited and did not provide a full
20 picture of the effect of competition on AT&T Alascom. Staff claimed that historical
21 AT&T Alascom financial data does not clearly demonstrate that AT&T Alascom has
22 been unduly harmed by facilities competition in the last few years.

23 24 Relevant Statutes

25 There are two provisions within the State statutes relevant to the facilities
26 restriction:

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2 Sec. AS 42.05.800(6):

3 [T]he commission should provide for competition in a timely manner
4 and should adopt regulations that eliminate inappropriate
5 impediments to entry for long distance carriers fit, willing and able
6 to provide service.

7 Sec. AS 42.05.810(c):

8 Except as provided in (b) of this section [grandfather clause
9 allowing AT&T Alascom facilities], the commission may prohibit
10 installation of facilities for origination or termination of long distance
11 service in a given location only if it determines that installation of
12 the facilities in that location is not in the public interest.

13 Given the above, we believe the state legislature directs us to favor long
14 distance facilities competition, but allows us the ability to restrict construction when not
15 in the public interest. Arguably, any actions we take must also comply with Section
16 253 of the Act previously discussed.

17 Discussion

18 We have analyzed the record in this proceeding and conclude that in the
19 short term, given the high costs of construction and the limited demand for service,
20 there may be limited economic incentive for any major competitor to build in rural
21 Alaska even if the Commission repeals 3 AAC 52.355. Lifting the facilities restriction
22 may promote industry negotiations for joint ownership arrangements for facilities
23 expansion or upgrade in rural areas. If technological advances make it economical to
24 construct competing rural facilities, we believe that lifting the restrictions imposed
25 under 3 AAC 52.355 may ultimately reduce costs of service and increase infrastructure
26 development in rural Alaska, leading to public benefit.

If duplicate construction occurs in the currently prohibited areas,
reductions to AT&T Alascom's annual revenues may be minimal given the small line
counts in those areas. We agree with AT&T Alascom that GCI has picked some of the

1 best rural locations in the State to set its DAMA project. Therefore, the greatest
2 revenue impact on AT&T Alascom may have already been seen. The evidence on
3 record in this proceeding does not adequately demonstrate that lifting the facilities
4 restriction will: a) lead to ruinous competition; b) seriously harm AT&T Alascom's
5 financial viability or c) materially affect AT&T Alascom's ability to provide service as
6 the carrier of last resort.

7 We do not believe that resellers will be materially harmed by the
8 unresolved policy and rate issues after we lift the restriction. In fact, we believe that
9 the argument of harm to the resellers is insufficient to warrant keeping the facilities
10 restriction in place. Resellers may also benefit to the extent they have improved
11 choice of facilities in rural areas.

12 We recognize there are unresolved issues that must be addressed,
13 some of which relate to the facilities restriction. The lifting of this restriction is a
14 necessary initial step in bringing this docket to resolution.

15 Upon weighing the risks, we believe consumers are better off if we allow
16 market forces to operate by lifting the facilities restriction. We believe that to the
17 extent competition can emerge in rural areas, lifting the facilities restriction will lead to
18 improved customer choice, lower rates, and possibly improvements in technology. We
19 believe that facilities based interexchange competition in rural areas is in the public
20 interest. Consistent with AS 42.05.800, AS 42.05.810, and 47USC§253(a), we
21 therefore repeal 3 AAC 52.355.

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ORDER

THE COMMISSION FURTHER ORDERS, That, Section 3 AAC 52.355
will no longer be enforced and is repealed.

DATED AND EFFECTIVE at Anchorage, Alaska, this 20th day of November, 2000.

BY DIRECTION OF THE COMMISSION

(S E A L)